IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 468/2003
(Shanker Lal Vs. State of Rajasthan)

Date of Order : 20/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.K.Garg with Mr. Niranjan Singh for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 09.5.2003 passed by Judicial Magistrate, Dungargarh (for short 'the trial court' hereinafter) whereby after hearing the final arguments at the time of judgment, the trial court altered the charge from Section 325 IPC to Section 326 IPC. Aggrieved by the order altering the charge, the petitioner has filed the instant petition.

I have heard learned counsel for the petitioner and public prosecutor. Carefully gone through the order impugned as also the relevant material.

From the perusal of the order impugned it appears that the the trial court altered the charge from Section 325 IPC to Section 326 IPC only on the ground that injured PW-7

Lichhman Ram in his statement stated that the injury was inflicted by "Basola" which is a sharp edged weapon.

It is contended by learned counsel for the petitioner that the sole injury suffered by the injured was examined by PW-8 Dr. S.K.Bihani and it could not be ascertained as to by which weapon the said injury has been caused which is evident from the injury report Ex.P-9. The injured was referred to the Radiologist and on being X-rayed, the Radiologist opined that no bony injury is found. It is evident from the X-ray report dated 24.1.2002 that the Radiologist took the X-ray of the left Zygoma and from the X-ray plate it was opined that the injured has not suffered any bony injury. However, a clarification was sought by the police from the Doctor that the alleged injury has been caused by what nature of weapon. Vide Ex.D-2, PW-7 Dr. S.K.Bihani opined that in view of the Dentist's report, injury No.1 is grievous in nature. However, the nature of weapon cannot be ascertained. The injury is not dangerous to life. The opinion of the Dentist dated 2.2.2002 shows that the injury seen with lacerated alveolar mucosa and opined that there is a fracture of left Zygoma. Thus, from the opinion of PW-8 and PW-9, it cannot be said that the injury has been caused by a sharp edged weapon. Had the weapon been sharp, there would not have been a lacerated injury as noticed by the dentist. Even PW-7 injured in his whole statement, no where stated that the

injury was inflicted to him by a sharp edged weapon though stated the name of weapon i.e. Basola. There is no evidence that the injury was caused by sharp side of Basola.

Keeping in view the case as set up by the prosecution right from inception, in my view, there is nothing on record to suggest that the injury has been caused to the injured by sharp side of a weapon. The trial court without there being any acceptable evidence altered the charge from Section 325 IPC to Section 326 IPC. In my view, the order impugned cannot be sustained in the light of the material available on record and the petition deserves to be allowed.

In the result, the criminal misc. petition is allowed. The order impugned dated 9.5.2003 passed by the trial court is set aside. Stay petition stands disposed of. The trial court shall dispose of the case utmost expeditiously.

(H.R.PANWAR),J.

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